

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOHN DOE,

Plaintiff,

v.

LIFE INSURANCE COMPANY OF
NORTH AMERICA, ET AL.,

Defendants.

No. C 09-01665 WDB

**ORDER RE PLAINTIFF'S MOTION
FOR LEAVE TO AMEND**

Plaintiff has filed a motion for leave to amend the complaint, on which briefing is complete. The Court finds the matter suitable for decision without oral argument, and hereby VACATES the hearing on Plaintiff's motion previously set for November 4, 2009.

For the reasons stated below, Plaintiff's motion for leave to amend the complaint is GRANTED IN PART AND DENIED IN PART.

I. BACKGROUND

Plaintiff John Doe is a participant in the Defendant Long-Term Disability Plan for Employees of Excite, Inc. (the "Plan"). On April 15, 2009, Doe sued the Plan and its insurer, Life Insurance Company of North America ("LINA") for wrongful termination of benefits. Defendants filed their Answer on May 26, 2009, setting forth four affirmative defenses.

Plaintiff then filed a motion for judgment on the pleadings, asserting that two of Defendants' affirmative defenses for failure to exhaust administrative remedies were defective. Plaintiff withdrew the motion for judgment on the pleadings when Defendant

1 agreed to pay Plaintiff the benefits retroactively and the parties stipulated that reinstatement
2 of benefits would moot Plaintiff's benefits claim.

3 The parties further stipulated that "[n]o later than September 30, 2009, Plaintiff shall
4 file either a notice of dismissal or a motion for attorneys' fees and/or pre-judgment interest."
5 Docket no. 25.

6 Plaintiff has filed a motion for leave to amend his complaint to add two new claims.
7 Defendants timely filed an opposition, to which Plaintiff filed a reply.

8
9 **II. Plaintiff's Motion for Leave to Amend Complaint**

10 Plaintiff seeks to amend his complaint to assert two new claims for relief:

11 (1) claim for a declaration that Plaintiff is entitled to a disability waiver of premium under
12 the life insurance policy issued by Defendant LINA to his former employer, Excite, Inc.; and
13 (2) claim for interest on delayed long-term disability benefits, following LINA's decision to
14 reinstate Plaintiff's benefits after the filing of the original complaint.

15 Defendants do not oppose Plaintiff's request to amend the complaint to add the first
16 proposed new claim for life insurance premium waiver, provided that the new claim is
17 asserted against LINA and not the Plan. Defendants point out that the Plan is not the contract
18 upon which a life insurance claim is premised and therefore any claim for premium waiver
19 benefits against the Plan would be futile. Plaintiff does not appear to take issue with this
20 limitation on the first proposed new claim. Therefore, the Court GRANTS Plaintiff's motion
21 for leave to amend the complaint to add the life insurance premium waiver claim against
22 LINA.

23 As to Plaintiff's request to amend the complaint to state a claim for prejudgment
24 interest, Defendants oppose such an amendment because the parties had stipulated that
25 Plaintiff could bring a motion for prejudgment interest. Plaintiff argues that he should be
26 able to opt to amend the complaint, rather than bring a motion. However, Plaintiff has
27 stipulated to bring any claim for prejudgment interest in a motion, rather than allege a new
28 claim. Even though, in general, leave to amend is granted liberally, here Plaintiff already

1 agreed to bring his claim for interest in a motion. Thus, the Court DENIES Plaintiff's
2 motion for leave to amend to add the prejudgment interest claim. It is further ordered that,
3 there being no objection by Defendants to extend the deadline for Plaintiff's motion for
4 prejudgment interest, Plaintiff shall have until no later than November 20, 2009, to file the
5 motion.

6
7 **III. CONCLUSION**

8 For the reasons stated above, IT IS HEREBY ORDERED THAT:

- 9 1. Plaintiff's motion for leave to amend the complaint is GRANTED IN PART as
10 to the life insurance premium waiver claim against LINA;
11 2. Plaintiff's motion for leave to amend the complaint is DENIED as to the claim
12 for prejudgment interest and any other relief requested in the motion for leave
13 to amend;
14 3. Plaintiff must file an amended complaint, in compliance with Civil Local Rule
15 10-1, by November 20, 2009;
16 4. Plaintiff must file and serve his motion for prejudgment interest by November
17 20, 2009;
18 5. The November 4, 2009, hearing on Plaintiff's motion is VACATED.

19
20 Dated: November 2, 2009


TIMOTHY J. BOMMER
United States Magistrate Judge